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ABSTRACT

The standards outlined in this document compose the minimum licensing requirements for persons or organizations operating a child care facility in Arkansas. Sections of the guide concern the licensing authority and definition of units covered by the authority, center organization and administration, staff, program, discipline, records, nutrition, buildings and grounds, furniture and equipment, safety, care of school-age children, the licensing procedure, alternative compliance, and exemption of centers operated by churches. Appendices provide an immunization schedule; a copy of the Child Care Facility Licensing Act; information about the granting, revocation, denial, or suspension of license; and discussion of "show cause" hearings and appeal procedures. (RH)

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MINIMUM LICENSING REQUIREMENTS

for

DAY CARE CENTERS

PS 015027

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Arkansas Social Services Division

Department of Human Services

SS-PUB-002

MINIMUM LICENSING REQUIREMENTS
for
DAY CARE CENTERS

DEPARTMENT OF HUMAN SERVICES

ARKANSAS SOCIAL SERVICES DIVISION

CHILD DEVELOPMENT UNIT

SS-PUB-002 (R.5/84)-13-190020

In 1973 the Arkansas Legislature, acting for the Children of Arkansas, established the Child Care Facility Review Board responsible for the licensure of all Child Care facilities in the State. The Board meets monthly to review and act on the recommendations of the Division of Social Services. As the final authority in licensure, the Board has a major role in directing the course of child care in Arkansas -a trust well placed.

The Child Care Facility Review Board is:

Chairman - Commissioner of Social Services Division
P.O. Box 1437
Little Rock, AR 72203

Day Care
Mr. Lloyd Schuh
P.O. Box 2750
Ft. Smith, AR 72901
Term expires - March 1, 1984

Foster Care
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El Dorado, AR 71730

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Monticello, AR 71655
Term Expires March 1, 1983

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Term Expires March 1, 1986

Representative of the Family & Children's Services Advisory Committee
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University of Arkansas at Pine Bluff
Pine Bluff, AR 71601

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Little Rock, AR 72201

Representative of the State Department of Education
Mr. Larry Robertson
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State Capitol Mall
Little Rock, AR 72201

THE FOLLOWING STANDARDS HAVE BEEN COMPILED AS THE MINIMUM LICENSING REQUIREMENTS WHICH SHALL BE MET BY PERSONS OR ORGANIZATIONS WHICH OPERATE A CHILD CARE FACILITY. (SEE DEFINITION PAGE 2) IN ISSUING A LICENSE, THE ARKANSAS DIVISION OF SOCIAL SERVICES WORKS IN COOPERATION WITH THE LOCAL AND STATE HEALTH DEPARTMENTS, FIRE DEPARTMENTS AND CITY PLANNING OR ZONING DEPARTMENTS. PERSONS CONSIDERING OPENING OR EXPANDING A CHILD CARE FACILITY SHALL IMMEDIATELY CONTACT THESE INDIVIDUAL DEPARTMENTS FOR INSPECTIONS AND INFORMATION ON THEIR SEPARATE REGULATIONS. CLARIFICATION OR QUESTIONS SHALL BE DIRECTED TO THE APPROPRIATE LOCAL DEPARTMENTS.

TABLE OF CONTENTS

Section		Page
100	Licensing Authority and Definition	
101	Agency Responsibility	1
102	Application of Requirments	1
103	Child Care Facility Review Board Functions	2
104	Facilities Requiring Licensing	2
105	Penalties	2
106	Definition	2
200	Organization and Administration	3
300	Staff	
301	Staff/Child Ratio	3
302	Director	4
303	General Staff Requirements	5
304	Health Requirements of Staff	5
400	Program	5
500	Discipline	6
600	Records	
601	Staff Records	6
602	Child Records	7
603	General Facility Records	7
700	Nutrition	8
800	Buildings and Grounds	8
900	Furniture and Equipment	10
1000	Health	
1001	General	10
1002	Handwashing	11
1003	Drinking	11
1004	Toilet Facilities	11
1100	Safety	12
1200	Care of School Age Children	13
1300	Licensing Procedure	15
1400	Alternative Compliance	15
1500	Church-operated Exemption	17
Appendicies		18-30
A.	Immunization Schedule	18
B.	Child Care Facility Licensing Act	19
C.	Granting, Revocation, Denial or Suspension of License, Show Cause Hearing, Appeal Procedures	26

MINIMUM LICENSING REQUIREMENTS FOR DAY CARE CENTERS

100 LICENSING AUTHORITY AND DEFINITION

"The Child Care Licensing Act", Act 434 of 1969, as amended, is the legal authority under which the Child Care Facility Review Board prescribes minimum standards for a variety of child care facilities defined under the Acts. (If a facility requests participation in a federally funded child care program it shall also meet Health and Human Services Day Care Requirements as administered by Arkansas Division of Social Services staff in addition to the Minimum State Requirements.)

101 Agency Responsibility

The Division of Social Services (referred to hereafter as The Division) under the Department of Human Services is directly responsible for the inspection and evaluation of all child care facilities as defined according to Arkansas Stat. Ann. §83-902(D).

102 Application of Requirements

The following requirements contain reference to two types of licensing standards, using the words "shall" and "should". The use of the word "shall" indicates that the terms of the statement are required for a facility to be in substantial compliance. The use of the word "should" indicates that the statement is recommended but not required for substantial compliance.

In determining a recommendation for licensing or church-operated exemption, the facility shall be reviewed by a Child Care Licensing Specialist to determine that the facility is in substantial compliance with the requirements.

Substantial Compliance means there is no omission of the essential standards necessary to protect the health, safety, and welfare of the children and that all required standards will be met within a reasonable timeframe agreed upon by the Child Care Licensing Specialist and facility. Those essential standards which shall be met 100% are those which relate to: fire, health, safety, nutrition, staff/child ratio, and space. (Act 245 of 1983 states that licensing standards shall not include those of a religious or curriculum nature so long as the health, safety and welfare of the child is not endangered.) The standards for discipline shall be those in effect at the time of application for licensure.

All areas of the requirements are reviewed and considered based on the frequency, degree, severity and number and nature of noncompliance items present.

There may be situations in which a facility does not conform to a specific requirement, if so it may be possible to comply with a given requirement by an alternative method which meets the intent of the rule. The procedure for Alternative Compliance shall apply only to those standards which are to be met 100% (except items of health & fire safety which are to be met according to the terms of the appropriate Health and Fire Departments). Any deviation from the standards for discipline requires a request and approval of Alternative Compliance by the Child Care Facility Review Board.

103 Child Care Facility Review Board Functions

The Child Care Facility Review Board has the power to establish rules, regulations, and standards for licensing and operation of child care facilities. This includes all powers with respect to granting, revocation, denial, and suspension of licenses. Decisions regarding special situations shall be made on an individual basis by the Child Care Facility Review Board. Ark. Stat. Ann. §§83-901----83-919.

104 Facilities Requiring Licensing

"Child Care Facility" means any facility which provides care, training, education, custody, or supervision for any minor child who is not related by blood, marriage, or adoption to the owner or operator of such a facility, whether or not the facility is operated for profit, and whether or not the facility makes a charge for the services offered by it, and this definition includes, but is not limited to, a nursery, a nursery school, a kindergarten, a day care center, or a family day care home, foster homes, group homes and custodial institutions provided, that this definition does not include: (1) special schools or classes operated solely for religious instruction; (2) facilities operated in connection with a church, shopping center, business or establishment where children are cared for during short periods of time while parents or persons in charge of such children are attending church services, shopping, or engaging in other activities during such periods; (3) any educational facility, whether private or public, which operates solely for educational purposes in grades one or above and does not provide any custodial care; (4) kindergartens operated as a part of the public schools of this State; (5) any situation, arrangements, or agreement by which one or more persons care for the children of not more than four (4) families at the same time, but not to exceed six (6) children; (6) any educational facility, whether public or private which operates a kindergarten program in conjunction with grades one and above, and provides short term custodial care, prior to and/or following classes for those students. Ark. Stat. Ann.§§83-901----83-919.

105 Penalties

Any person violating any provisions of Ark. Stat. Annt. §§83-901----83-919, and any person assisting any partnership, group, corporation, organization or association in violating any provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than $25 and not more than $100. Each day of such violation shall constitute a separate offense.

106 Definition

A child care center is defined as any facility conducted under public or private auspices on a profit or non-profit basis providing direct care and protection for children. Any facility which is open more than five (5) hours during any twenty-four hour period or more than a total of ten (10) hours during a seven (7) day period is considered a day care center and shall be subject to the provisions of the Child Care Licensing Law. Those facilities meeting the above definitions but operating no more than 3 consecutive weeks are not required to comply with the licensing requirements.

A public or private school which operates a Kindergarten in conjunction with grades one and above, or for grades one and above only and provides short-term custodial care (not to exceed 20 hours weekly) prior to and/or following classes for those students is not required to comply with licensing requirements for the short-term custodial care provided.

For the purpose of these requirements a Kindergarten program shall be defined as a program offered for children 5 years of age during the school year prior to their entry into first grade class.

1. Minimum Licensing Requirements for Infants/Toddlers apply to children up to the age of 3 years.

2. Minimum Licensing Requirements for Day Care Centers apply to children 2 1/2 years and up. Enrollment may include school age children for summer care, or before and/or after school care.

(It should be noted that there is a six (6) month age variance between the two minimum licensing requirements. This is to provide the opportunity for children to be placed in the group most suitable to their social, emotional, environmental and developmental maturity.)

200 ORGANIZATION AND ADMINISTRATION

1. The board, or director if there is no board, shall be responsible for operating the facility and shall have final responsibility to ensure that the facility shall meet minimum licensing requirements.

2. The purpose and policies of the Day Care Center shall be defined in the application for a license. Written statements of policy shall be made available for review during the licensing process, these shall include but not be limited to the following:

   - Purpose and operational policies of the center;
   - Policies pertaining to the admission and discharge of children;
   - Policies pertaining to the care and discipline of children;
   - Title, duties and hours of each employee;
   - If the center has a governing board, there shall be clear lines of responsibility for the board and administrator.

   The above information shall be maintained in the general facility records.

300 STAFF

301 Staff/Child Ratio

1. The following staff/child ratios shall be maintained at all times:

   Ages 2 1/2 and 3 years - 1 worker per 12 children
   4 years - 1 worker per 15 children
   5 years to first grade - 1 worker per 18 children
   First grade and older - 1 worker per 25 children

   In a group containing children of different ages, the staff/child ratio shall meet the requirements for the youngest child in the group. In the event that during lunch or out-door play activities, children of different age groups are together in large areas, the staff/child ratio for the respective age groups shall be maintained.

2. Additional staff provisions shall be made for the following:

   . Preparation and serving of food.

   . Housekeeping activities.

   . Absence of staff members.

   . Emergencies and accidents with children or staff which make it necessary for a staff member to be absent from the center.

   . Enrollment of physically handicapped or emotionally disturbed children who require individual attention.

   . Evening and night care. No staff member shall be scheduled to more than ten hours per twenty-four hour period.

   . During naptime a minimum of 50% of the staff shall remain with the children, with a total of 75% of the Staff remaining in the building. At no time shall children be left unattended.

3. If a facility has an attendance of more than fifty (50) children, the director and/or person in charge shall not be included in the staff/child ratio except during naptime.

4. If a director is in charge of more than one child care facility, and the combined attendance exceeds fifty (50) children, the director shall not be included in the staff/child ratio in any of the facilities.

5. Volunteers shall be under the direct supervision of the director or a designated staff member.

302 Director

1. All facilities shall have a director and/or person in charge on the premises at all times. The name of the person in charge shall be posted.

2. The director shall be responsible for planning, managing, and controlling the facility's daily activities.

3. The director and/or person in charge of the center shall be between the age of 21 and 70 years. Directors older than 70 shall be considered on an individual basis.

4. Directors of centers opening on or after October 1, 1970 shall have the minimum of a high school education or a CDA credential.

5. The director and the program staff shall attend one or more training sessions regarding child care during the year. (Refer to Section 601.7)

303 General Staff Requirments

1. Staff members shall be between the ages of 18 and 70. Staff members under age 18 or over age 70 shall be considered on an individual basis and shall be under the direct supervision of the director or the person in charge of the center.

2. Staff members shall be able to read and write.

3. Any person convicted of a felony or misdemeanor involving moral turpitude shall not serve as a staff member.

4. Any person who has been convicted of a felony or misdemeanor involving child abuse or neglect of a child shall not serve as a staff member.

5. Any substantiated report of child abuse or neglect shall be considered in determining the employment of a staff member.

304 Health Requirements of Staff

1. All persons working in a child care center in any capacity, including volunteers, shall obtain a health card or physician's statement showing the absence of communicable disease and tuberculosis. This shall be renewed on a yearly basis.

2. Any person caring for children shall be physically able to carry out his/her assigned tasks and responsibilities.

3. If a child care center is operated in a private home, a health card or physician's statement shall be required of household members who may come in contact with the children.

400 PROGRAM

1. Program is defined as all activities that comprise the child's day at the center.

2. A schedule of the program (daily activities) shall be written, posted, and followed with reasonable closeness.

3. There shall be a supervised rest period of at least one hour on individual cots or mats for all pre-school children who attend for more than five hours. Children who arrive at lunch or shortly after shall be required to rest.

4. There shall be at least one hour of outdoor play per day in suitable weather. There shall be opportunities for vigorous play either outdoors or indoors regardless of the weather.

5. The program shall include a good balance between individual and small group play. It shall also offer alternating periods of active play and quiet times throughout the daily session. Children shall have opportunities to engage in group activities and quiet play.

500 DISCIPLINE

1. The use of discipline shall not be humiliating, frightening, or physically harmful to children. Discipline shall be consistent and individualized for each child, it shall be appropriate to the child's level of understanding; and be directed toward teaching the child acceptable behavior.

2. Discipline shall not be associated with food, rest, toilet training or isolation for illness.

3. Labeling of the child as "bad", "naughty", etc. should be avoided. Inappropriate punishment including physical punishment, restraint, scolding, harsh treatment, isolation without supervision, verbal abuse, sarcasm, threats or derogatory remarks about the child or his family have no place in a well managed day care center.

4. Methods of discipline used by the center shall be discussed with each child's parent at the time of enrollment.

5. If the policy of a facility includes physical punishment, it shall be administered only with the prior written consent of the parent or guardian with the following guidelines being met:

   . Punishment is to be administered by the director or person in charge.
   . An adult witness is to be present.
   . Any spanking shall be administered below the waist and preferably with an open hand on the buttocks.

600 RECORDS

601 Staff Records

Staff records shall be kept and made available to Arkansas Social Services Licensing Staff on request. These records shall include the following:

1. Name, date of birth, address and telephone number;
2. Education, training and experience;
3. Health record's including current health card and/or physician's statement;
4. At least two character or employment references;
5. Daily attendance record;
6. Date of employment and date of separation;
7. Training session attendance.

602 Child Records

Child records shall be kept and made available to Arkansas Social Services Licensing staff on request. These records shall include the following:

1. Application form which includes child's name and date of birth, name of parent or guardian, telephone numbers, and work hours of parents or guardians.

2. The name, address and telephone, (home and business) of a responsible person to contact in an emergency if the parent or guardian cannot be located promptly.

3. Name, address and phone number of child's physician.

4. Written permission of parent or guardian authorizing emergency medical care.

5. Permission slip signed by parents or guardian authorizing the child to be taken on field trips.

6. Pertinent medical history on the child; and any change in health, including accidents or injuries that occur in the center.

7. Name of person(s) authorized to pick-up child.

8. An authorized record of up-to-date immunizations as required by the Arkansas State Department of Health. The center should maintain a roster of children who have not completed the minimum immunization requirements.

603 General Facility Records

General Facility Records shall be kept and made available to Arkansas Social Services Licensing staff on request.

These records shall include the following:

1. General attendance records on all children;
2. Fire Department Inspection reports;
3. Arkansas State Department of Health Inspection reports;
4. Local zoning approval, if applicable;
5. Liability insurance certificate;
6. Policies governing the center;
7. Record of routine emergency drills noting dates, time of day, and length of drill;
8. Summary report of accidents or injuries which occur in the center.

700 NUTRITION

1. The center shall plan, prepare, and serve a well-balanced noon meal offering a variety of foods. Menus shall be posted. Meals shall include 1/3 of the minimum daily nutritional requirements from each of the four basic food groups. Milk shall be provided to each child during the day.

2. Breakfast shall be made available for children who arrive early. A nutritious evening meal shall be available to children who are present during the supper hour.

3. Mealtime atmosphere shall be as enjoyable and relaxed as possible and no child shall be forced to eat, but shall be encouraged to set his or her own pace according to personal preferences.

4. Meals shall be served at tables so that each child may be seated. An adult staff member shall be present with the children while eating.

5. Mid-morning and mid-afternoon snacks of nutritional value shall be provided for all children by the center.

6. Vending machines shall not be available to children. Carbonated drinks shall not be made available to the children except on special occasions.

800 BUILDINGS AND GROUNDS

1. All facilities and equipment used for the preparation, storage and/or transporting of foods shall meet the Minimum Regulations of the Arkansas State Department of Health, Division of Sanitarian Services.

2. Day Care Centers shall comply with local Fire and Health Department requirements, and building, and plumbing zoning ordinances. Written verification of the annual inspection by the Arkansas State Department of Health and Fire Department shall be on file in the facility.

3. If an Infant and Toddler Center and Day Care Center are operated in the same bulding, the areas designated for care of Infants and Toddlers shall be in rooms or quarters separate from the activity of other children. If it is necessary for the room or rooms to adjoin the section occupied by older children, provisions shall be made to prohibit the entrance of the older children into the Infant and Toddler area. This may be achieved by closing the door or installing a gate.

4. All space within a center shall be kept clean and free of hazardous or potentially hazardous objects.

5. Thirty-five square feet per child of usable floor space shall be required for indoor activities. This does not include hallways, bathroom, and kitchen floor space. Separate space shall be provided for the isolation of children who become ill, and shall be located in an area that can be supervised at all times by a staff member.

6. All parts of the center building used by the children shall be well heated, lighted and ventilated during each day. Glass doors shall be clearly marked. Doors and windows shall be tight enough to prevent drafts. When windows and doors are used for ventilation, heavy screens and proper safety precautions shall be taken. New or replacement windows or glass doors should be plastic or tempered glass.

7. Floor furnaces, gas heaters, electric heaters, hot radiators, hot water heaters, air conditioners and electric fans, shall have guards without sharp corners.

8. Heating shall be adequate to keep the floor warm and the room temperature between 68 and 75 degrees. Adequate ventilation shall be provided year round.

9. Floor or floor covering shall be in good condition and kept sanitary. Torn or worn covering shall be replaced to prevent accidents. Paints used in any way in the facility shall be lead free.

10. Walls shall be kept clean and free of torn paper, broken plaster and holes.

11. Outdoor play space shall meet the following requirements:

    - There shall be an approved enclosed space offering at least 75 square feet per child present on the playground at any given time.
    - There shall be an emergency exit from the play area, far enough from the building to provide a safe exit in the event of fire.
    - The area shall be well drained.
    - The area shall be free of hazards or potentially hazardous objects.
    - There shall be playground equipment appropriate for the age and number of children enrolled in the facility. Equipment shall be properly anchored, safe and shall offer a variety of activities.
    - Sand for playing shall be kept safe and clean.

12. A day care center shall have a telephone if the service is available in the community.

13. Mobile homes shall not be used as day care centers. Mobile homes currently licensed (prior to July 1, 1980) as day care facilities may continue to be used if tied down as recommended by the Defense Department's Civil Preparedness Agency.

900 FURNITURE AND EQUIPMENT

1. Each day care center shall be equipped with toys, books and play apparatus to take care of the needs of the total group and to provide each child with a variety of activities throughout the day. A variety of this equipment shall be accessible from low shelves to the children of all ages.

2. All equipment shall be sturdy and safe and shall be free from sharp edges, protruding nails and splinters.

3. Paint on toys and other materials used by the center shall be lead free.

4. Chairs and tables shall be the size appropriate to the body measurements and ages of children. There shall be a minimum of one sturdy chair for each child in attendance.

5. Individual hooks and/or compartments shall be provided for hanging or storing outer and extra clothes and for personal possessions.

6. There shall be a closed storage space for extra materials and other equipment when not in use.

7. Sleeping arrangements shall provide for a comfortable and safe rest period for children.

   . There shall be a labeled individual cot or mat, bottom sheet, and adequate cover for each child who remains for more than five (5) hours in the day care center. This requirement shall also apply when a child arrives at the center during nap time or for evening care.

   . The use of mats shall also be acceptable if the following guidelines are met:

      a. Mats shall be heavy duty, non-folding and be at least two inches thick, 2 feet wide and 4 feet in length and covered in a washable, waterproof material.
      b. Mats shall be allowed only in facilities which are carpeted and are draft free.
      c. There shall be adequate cover for each child.

   . Cots, and mats and bedding shall be kept in a sanitary condition, and once a sheet or blanket has been used by a child, it shall not be used by another child until it has been washed or dry cleaned.

1000 HEALTH

1001 General

1. Children shall be checked each morning on arrival for contagious or infectious disease and not admitted if ill.

2. Any child who becomes ill and unable to participate in the daily activities shall be isolated and supervised. Appropriate action should be taken to meet the individual needs of the child. Parents or guardian shall be notified immediately.

3. Parents shall be notified of contagious illness in the center as soon as possible.

4. Medication shall be given to children only with written parental permission.

5. A first aid supply shall be kept in reach of the staff, but not in reach of the children. Medicine shall be kept out of the reach of the children.

6. Smoking shall be prohibited in the presence of children and shall be limited ot a designated area.

7. Disposal of garbage, trash, and liquid waste shall meet the standards of the Arkansas State Department of Health.

1002 Handwashing

1. Paper towels are preferable for children's use. If regular towels are used there shall be one for each child. These shall be laundered daily.

2. Soap shall be available.

3. Hot and cold running water shall be available in each lavatory.

1003 Drinking Facilities

1. The water supply shall be approved by the Arkansas State Department of Health.

2. Water shall be dispended by any of the following means:

   a. Fountain.
   b. Paper cups.
   c. Individually labeled cup which shall be washed daily.

1004 Toilet Facilities

1. There shall be 1 toilet and 1 washbasin available for each group of fifteen (15) children.

2. While a bathtub is not required, the facility shall have a safe method of bathing children when necessary.

3. Children shall not be punished or berated in any way for soiling their clothes. Clean clothes shall be available for those children who, because of age or other circumstances, might accidentally soil themselves.

4. Each center licensed for thirty (30) or more children shall have separate toilet facilities for the staff.

5. In the event that an Infant and Toddler Center and a Day Care Center are operated in the same building, the toilet facilities for staff may be shared.

1100 SAFETY

1. There shall be written fire and tornado policy. Routine emergency drills shall be practiced monthly and staff shall be thoroughly familiar with safety drill procedures. (See Records Section 600)

2. Evidence of financial responsibility of a minimum of $100,000 or liability insurance of a like amount shall be required.

3. Reports of abuse or neglect of a child shall be thoroughly reviewed by the licensing agency. It is the responsibility of any child care worker to report any suspected abuse or neglect of a child to the County Social Services office. (As prescribed in Act 397 of 1975 -- Ark. Stat. Ann. §§42-807----42-818.)

4. All detergents, cleaning supplies and poisons shall be kept out of the reach of children.

1101 Transportation

1. Any person driving a vehicle transporting children for day care purposes shall meet staff age requirements and have a current Arkansas driver's license.

2. The vehicle shall be licensed, insured and maintained in proper working condition.

1102 Swimming Pools

Any pool of water in excess of 12 inches deep is defined as a swimming pool. This does include natural pools of water such as lakes, ponds and rivers.

Swimming pools and natural pools of water, such as lakes and ponds may be used for water play if the following requirements are met:

1. Health Department approval where applicable.

2. Written parental permission.

3. There shall be one person present at all times who has received Red Cross Life Saving certification or is a Water Safety Instructor (WSI).

4. Adult supervision of the children at all times, with grouping based on the following child/staff ratio (unless children are enrolled in an authorized swimming instruction program):

	Non-Swimmers	Swimmers
1st gr. & up	1:6	1:12
5 years	1:5	1:10
4 years	1:3	1:6
2 1/2 - 3 years	1:2	1:5

In the event that children of different ages are swimming in a group the staff/child ratio shall be based on the youngest child within the group.

5. Swimming pools located within the enclosed play area of the center shall have a fence and a locked gate.

1200 SPECIALIZED DAY CARE SERVICES

1201 Care of School Age Children

In accordance with the Definition (Section 106) if a facility cares for school-age children (1st grade and above) for any portion of a day whether before and/or after school, or for extended periods during public/private school holidays or during the summer months, its program for care of school-age children shall comply with the Day Care Center Regulations with the following exceptions and/or additions.

1. There shall be a staff/child ratio of 1:25 for children aged first grade and above.

2. A rest period on cots is not required. However, a period for quiet activities must be provided.

3. If a facility designates an area of the center solely for the care of school-age children there shall be 25 square feet of indoor useable floor space per child.

4. If a facility utilized the out-of-doors as its major program component for school-age children, covered pavillions and other roofed structures shall provide 25 square feet per child.

5. The requirements for an enclosed outdoor play area may be exempted at the discretion of the licensing worker, if health, safety, and fire hazards are not present. The space requirement for outdoor play area per child remains applicable.

6. Sack lunches shall be acceptable for school-age children.

7. There shall be a minimum ratio of 1 toilet and 1 wash basin per 30 school-age children. Separate toilet facilities for boys and girls shall be provided.

8. The program of activities for school-age children shall be flexible and provide an opportunity for a child to choose how he will spend his time.

A program for school-age children shall provide a variety of activities which may include the following: excursions to museums, zoos and parks, picnics, nature hikes, archer, trampolines, swimming, boating, fishing, horseback riding, physical education, skating and outdoor play.

The nature of many of these activities calls for special precautions to be taken to safeguard the health and welfare of children. Upon enrollment, parential permission shall be obtained and kept on file for each activity in which a child may participate.

1300 LICENSING PROCEDURE

1. An individual or group wishing to establish a child care facility may obtain an application for a license and related forms from Arkansas Social Services.

2. The applicant shall submit to Arkansas Social Services a plan of operation including the purpose of the faciiity, policies of admission, a list of staff and their qualifications, and a description of the services which will be provided to children.

3. The facility shall be inspected and approved by Arkansas Social Services staff before a license may be issued by the Child Care Facility Review Board. A licensee shall not accept more children than the maximum specified on the license. Arkansas Social Services shall have authority to visit and inspect the facility. Ordinarily, this visit shall be made after appropriate notice has been given to the Director or the person in charge of the facility.

4. The license shall be renewed one year from the date of issuance and each year thereafter. The license shall apply only to the facility's location at the time of licensing. The licensee shall notify Arkansas Social Services of a change of location or ownership at which time a new study will be made before a new license may be issued.

5. If the Social Services Division finds that an applicant for a child care facility meets the licensing requirements for a child care facility, in the main, and has a reasonable expectation of correcting deficiencies in a reasonable time, the Social Services Division may, in its discretion, recommend a provisional license for operation of a child care facility, with such provisional license to be in effect for a reasonable time, not to exceed six months, which time shall be specified in the provisional license. Upon expiration of the provisional license the facility must meet requirments or cease operation. Successive provisional licenses shall not be issued. A written list of deficiencies shall be provided the applicant at the time of issuance of provisional license.

1400 ALTERNATIVE COMPLIANCE

1. The Child Care Facility Review Board may grant alternative compliance with the Minimum Licensing Requirements for Day Care Centers promultated under the authority of Ark. Stat. Ann. §§ 83-901---83-919, as revised, if the Board determines that the alternative form of compliance offers equal protection of health, safety and welfare to children and meets the basic intent of the requirement for which the alternative compliance is sought.

2. The Child Care Facility Review Board shall consider all requests for alternative compliance with the Minimum Licensing Requirements except those requirements which are enforced by the Department of Health, Local Fire Marshal or State Fire Marshal's office and applicable city ordinances including zoning.

3. To request alternative compliance the following procedure shall be initiated by the person responsible for the operation of the facility:

   a. The applicant/licensee shall submit the request for alternative compliance in writing.

   b. The request shall include:

      . The specific standard for which alternative compliance is sought.

      . An explanation of how the alternative form of compliance is equal to or exceeds the stated requirement.

      . Full justification and description of what the alternative compliance method will be and the method by which the facility will carry out this plan to be able to continue to provide for the health, safety and welfare of children as intended by the requirement.

      . The applicant/licensee shall provide clear and supportive evidence and upon request of the Child Care Facility Review Board an expert's opinion of the effect of the health, safety and welfare of children and how it will be protected through the alternative means of compliance.

4. A separate written request shall be submitted for each requirement for which alternative compliance is sought.

   The approved alternative compliance is effective for the duration of the license only, unless a shorter time frame is requested. A request for alternative compliance shall be submitted with each subsequent application if the licensee requests continuation.

5. The granting of alternative compliance for a requirement shall in no way constitute a precedent. If an alternate means of complying with the requirement is granted by the Child Care Facility Review Board, and the facility fails to satisfactorily implement this alternate means, the original requirement for which alternative compliance was sought shall become immediately enforceable.

6. The Child Care Facility Review Board shall have the right to obtain an expert opinion to corroborate that provided by the applicant/licensee.

7. The Child Care Facility Review Board reserves the right to deny requests for alternative compliance when it finds that such request does not adequately protect the health, safety and welfare of children and does not meet the intent of the requirements.

8. All requests for alternative compliance shall be answered in writing by the Child Care Facility Review Board.

1500 Church-operated Exemption

1. Act 245 of 1983, Section 1 defines those facilities which may apply for an exemption from the obtaining of a license to operate a child care facility and the process through which such exemption may be granted. The facility must be operated by a church or group of churches and be exempt from the State Income Tax levied by Act 118 of 1929, as amended. The person or persons in charge of such a facility shall annually submit a written request to Child Care Facility Review Board for such exemption along with the following:

   a. verification of exemption from State Income Tax,
   b. certification that the facility is operated by a church or group of churches,
   c. verification that the facility has been inspected annually and meets the applicable fire safety and health standards, and

   d. certification from the facility that it is in substantial compliance with published standards that similar non-exempt child care facilities are required to meet.

2. The Child Care Facility Review Board shall review each request for a church-operated exemption and reply in writing within 60 days from receipt of such request.

3. The facility shall be visited by Arkansas Social Services staff to verify the facility's substantial compliance with the published standards prior to the consideration and review by the Child Care Facility Review Board.

4. The Child Care Facility Review Board shall consider each request for exemption and shall review the agency staff's written report in determining a facility's substantial compliance with published standards.

5. If a facility claims and states the belief that a particular standard is of a religious or curriculum nature the Child Care Facility Review Board shall consider and make a determination on the statements which shall then be a final action subject to review under the Administrative Procedures Act.

6. Written notification of an exemption shall be made to the facility stating the maximum number of children allowable, the dates of exemption and any other conditions by which an exemption is granted.

7. Arkansas Social Services staff shall have the authority to visit any church-operated exempt facility to review, advise and verify the maintenance of substantial compliance at the direction of the Child Care Facility Review Board.

APPENDIX A

IMMUNIZATION SCHEDULE

The minimum requirements for entry into a Child Care Facility will depend upon the ages of the children admitted. The following immunization schedules are recommended by Arkansas Department of Health:

Children 2 Months to 15 Months of Age

VACCINE	AGE	REQUIRED NO. OF DOSES
Polio (Oral, Trivalent)	2 months	1
DTP (Diphtheria, Pertussis, Tetanus)	2 months	1
Polio	4 months	1
DTP	4 months	1
Polio	6 months	1
DTP	6 months	1
*Measles (Rubeola)	15 months	1
*Rubella	15 months	1

*Measles and Rubella may be administered singularly, combined togehter as Measles/Rubella in a single dose, or combined togehter as Measles/Mumps/ Rubella in a single dose.

Children 15 Months of Age and Older

VACCINE	Minimum Number of Doses Required
Polio	3
DTP*	3
Measles (Rubeola)	1
Rubella	1

*Children 6 years of age and older should receive Td (adult-tetanus/ diphtheria) vaccine instead of DTP.

APPENDIX B

CHILD CARE FACILITY LICENSING ACT

SECTION.		SECTION.	
83-901.	Title of act.	83-911.1.	Adjudication procedures.
83-902.	Definitions.	83-912.	Repealed
83-903.	Operation of facilities without license unlawful.	83-913.	Repealed
83-904.	Rules and regulations by child care facility review board - Consultation with commissioner of education and other agencies - Bases of regulations.	83-914.	Misdemeanors - Penalties.
83-905.	Application for license - Issuance for one year - Limiting number of children served by facility.	83-915.	Injunctions.
83-906.	Provisional licenses.	83-916.	Licensing of existing facilities - Compliance with act within one year.
83-907.	License limited to location stated - Not transferable.	83-917.	Declaratory judgements on regulations.
83-908.	Declared unconstitutional	83-918.	Declared unconstitutional
83-909.	Records and reports.	83-919.	Declared unconstitutional
83-910.	Denial, revocation, or suspension of license - Written notice.	83-920.	Religious exemption - Written request and verifications.
83-911.	Child care review board - Membership - Terms - Adoption of rules and regulations governing procedure - Powers of welfare department transferred to review board.	83-921.	Annual statement of compliance with standards - Visits by board - Standards for substantial compliance and for corporal punishment.
		83-922.	Review by board - Appeal or challenge.
		83-923.	"Substantial compliance" and "is being operated in accordance with this Act" defined - Applicability.
		83-924.	Act cumulative

Act 518 of 1981 has been declared unconstitutional by the U.S. District Court, Eastern District of Arkansas, Western Division in Case # LRC-83-192 November 22, 1983.

83-901. Title of act. --This Act (§§ 83-901 --83-916) shall be known and cited as the "Child Care Facility Licensing Act." (Acts 1969, No. 434, § 1, p. 1154.)

83-902. Definitions. --As used in this Act (§§ 83-901 --83-916), the following terms shall have the meanings set out below:

(A) "Welfare Department" means the State Department of Public Welfare (Division of Social Services).

(B) "Welfare Board" means the State Board of Public Welfare.

(C) "Welfare Commissioner" means the Commissioner of the State Department of Public Welfare (Social Services).

(D) "Child Care Facility" means any facility which provides care, training, education, custody, or supervision for any minor child who is not related by blood, marrige, or adoption to the owner or operator of such a facility, whether or not the facility is operated for profit, and whether or not the facility makes a charge for the services offered by it, and this definition includes, but is not limited to, a nursery, a nursery school, a kindergarten, a day care center, or a family day care home, foster homes, group homes and custodial institutions; provided, that this definition does not include: (1) special schools or classes operated solely for religious instruction; (2) facilities operated in connection with a church, shopping center, business, or establishment where children are cared for during short periods of time while parents or persons in charge of such children are attending church services, shopping, or engaging in other activities during such periods; (3) any educational facility, whether private or public, which operates solely for educational purposes in grades one or above and does not provide any custodial care; (4) kindergartens operated as a part of the public schools of this State; (5) any situation, arrangement, or agreement by which one or more persons care for the children of not more than four (4) families at the same time, but not to exceed six (6) children (6) any educational facility, whether public or private which operates a kindergarten program in conjunction with grades one and above, and provides short term custodial care, prior to and/or following classes for those students. (Acts 1969, No. 434, § 2, p. 1154; 1973, No.. 123, § 4, p. 434.)

83-903. Operation of facilities without license unlawful. --From and after September 1, 1970, it shall be unlawful for any person, partnership, group, corporation, organization or association to operate or assist in the operation of a Child Care Facility which has not been licensed by the Welfare Department (Child Care Facility Review Board). (Acts 1969, No. 434, § 3, p. 1154.)

83-904. Rules and regulations by child care facility review board -- Consultation with commissioner of education and other agencies --Bases of regulations. --(A) On or before January 1, 1970, the Welfare Department (Child Care Facility Review Board) shall promulgate and publish rules and regulations setting minimum standards governing the granting, revocation, refusal, and suspension of license for a Child Care Facility and the operation of a Child Care Facility. The Welfare Board shall advise the Welfare Department (Child Care Facility Review Board) regarding proposed rules and regulations and in developing proposed rules and regulations shall consult with the State Health Officer (Director of the Department of Health) or his designated representative in regard to rules and regulations relating to health, and the Welfare

Department (Child Care Facility Review Board) shall consult with the State Commissioner of Education or his designated representative in regard to rules and regulations relating to education. The State Health Officer (Director of the Department of Health) and the State Commissioner of Education and their designated representatives are hereby directed to cooperate with and assist the Welfare Department (Child Care Facility Review Board) in developing rules and regulations in the respective areas of health and education. In developing these rules and regulations the Welfare Department (Child Care Facility Review Board) may consult with such other agencies, organizations or individuals as it shall deem appropriate. Rules and regulations promulgated by the Welfare Department (Child Care Facility Review Board) as set out above may be amended by the Welfare Department (Child Care Facility Review Board) from time to time, provided, any such amendment to the rules and regulations shall be published and furnished to all licensed Child Care Facilities and applicants for a license at least sixty (60) days prior to the effective date of any such amendment.

(B) In establishing requirements and standards for the granting, revoking, refusing, and suspending of a license for a Child Care Facility the Welfare Department (Child Care Facility Review Board) shall adopt such rules and regulations as will: promote the health, safety and welfare of children attending a Child Care Facility; promote safe, comfortable, and healthy physical facilities for the children who attend the Child Care Facility; insure adequate supervision of the children by capable, qualified and healthy individuals; insure appropriate educational programs and activities within each Child Care Facility; and insure adequate and healthy food service where food service is offered by the Child Care Facility. (Acts 1969, No. 434, § 4, p. 1154.)

83-905. Application for license --Issuance for one year --Limiting number of children served by facility. --Any person, partnership, group, corporation, organization or association desiring to operate a Child Care Facility shall first make application for a license for such a facility to the Welfare Department (Child Care Facility Review Board) on the application forms furnished for this purpose by the Welfare Department (Child Care Facility Review Board). The Welfare Department (Child Care Facility Review Board) shall act on any such application within sixty (60) days after it has been received by the Welfare Department (Child Care Facility Review Board). If an applicant meets the requirements of this Act (§§ 83-901 --83-916) and the published rules and regulations of the Welfare Department (Child Care Facility Review Board) regarding minimum standards for a Child Care Facility, the applicant shall be granted a license by the Welfare Department (Child Care Facility Review Board) as a Child Care Facility, which license shall continue in effect for one (1) year or until revoked or suspended as provided herein. In issuing a license for a Child Care Facility, the Welfare Department (Child Care Facility Review Board) may limit the number of children who may be served by that facility. (Acts 1969, No. 434, § 5, p. 1154.)

83-906. Provisional license. --If the Welfare Department (Child Care Facility Review Board) finds that an applicant for a Child Care Facility meets the licensing requirements for a Child Care Facility in the main and has a reasonable expectation of correcting deficiencies in a reasonable time, the Welfare Department (Child Care Facility Review Board) may, in its discretion, issue a provisional license for a Child Care Facility, with such provisional license to be in effect for a reasonable time, which time shall be specified

in the provisional license. Issuance of provisional licenses shall be in accordance with the published rules and regulations adopted by the Welfare Department (Child Care Facility Review Board) in accordance with this Act (§§ 83-901 --83-916). (Acts 1969, No.. 434, § 6, p. 1154.)

83-907. License limited to location stated --Not transferable. --A license for a Child Care Facility shall apply only to the address and location stated on the application and license issued, and it shall not be transferable from one holder of the license to another or from one place to another. If the location of a Child Care Facility is changed or the operator of the Child Care Facility is changed the license for the Child Care Facility shall automatically be revoked on such a change. (Acts 1969, No. 434, § 8, p. 1154; 1981, No. 518 § 2, p. 1043.)

83-908. This section has been declared unconstitutional by the U.S. District Court, Eastern District of Arkansas, Western Division in Case #LRC-83-192 November 22, 1983.

83-909. Records and Reports. --The Welfare Department (Child Care Facility Review Board) may by published rules and regulations require that a licensed Child Care Facility keep and make available to the Welfare Department (Child Care Facility Review Board) such records and periodic reports as shall be necessary to assist the Welfare Department (Child Care Facility Review Board) in determining if the requirements of this Act (§§ 83-901 --83-916) and of the Welfare Department's (Child Care Facility Review Board) rules and regulations regarding Child Care Facilities are being complied with. (Acts 1969, No. 434, § 9, p. 1154.)

83-910. Denial, revocation, or suspension of license --Written notice. --The Welfare Department (Child Care Facility Review Board) shall have the power to deny, revoke, or suspend a license for a Child Care Facility if an applicant or licensee has failed to comply with the provisions of this Act (§§ 83-901 --83-916) or any published rule or regulation of the Welfare Department (Child Care Facility Review Board) relating to Child Care Facilities. If a license is denied, revoked or suspended such denial, revocation, or suspension shall be effective when made and the Welfare Department (Child Care Facility Review Board) shall notify the applicant or licensee of such action in writing and set out the basis for the denial, revocation or suspension of the license. (Acts 1969, No. 434, § 10, p. 1154.) (Refer to 83-911.1)

83-911. Child care review board --Membership --Terms --Adoption of rules and regulations governing procedure --Powers of welfare department transferred to review board. --There is hereby created the Child Care Facility Review Board which shall consist of: The Commissioner of the State Department of Public Welfare, which was renamed as the Social Services of the Department of Social and Rehabilitative Services under the provisions of Act 38 of 1971 (§§5-901 - 5-922); the State Health Officer (Director of the Department of Health) or his designated alternate; one (1) representative to be designated by, and from the membership of, the Family and Children's Service State Advisory Committee; three (3) persons engaged in the provision of child care, one (1) each from the field of Day Care, Institutions, and Foster Care, to be appointed by the Governor from lists of persons nominated by associations or committees of providers of child care; and one (1) representative from the public to be

appointed by the Governor; the State Commissioner of Education, or his designated alternate. The four (4) members of the Board appointed by the Governor shall, at all times, be from different counties and at least two (2) of these members shall be chosen from an area north of the fifth principal meridian and the other two (2) from an area south of the (fifth) principal meridian; they shall, at the first organization meeting of the Board, determine by lot their respective terms in order that the term of one (1) member shall expire on March 1, 1974, and the term of one (1) member shall expire on March 1 of each year thereafter. Successor members shall be appointed for four (4) year terms. Members of the Board shall serve without compensation, but each member of the Board shall be entitled to reimbursements for expenses for necessary meals, lodging, and mileage in attending Board meetings, to be payable from funds appropriated for the maintenance and operation of the Social Services Division of the Department of Social and Rehabilitative Services.

The Commissioner of Arkansas Social Services shall be Chairman of the Child Care Facility Review Board, but shall vote only in case of a tie vote. Within sixty (60) days following the passage of this Act, the Child Care Facility Review Board shall meet and adopt rules and regulations governing its procedures, and such rules and regulations shall be published and filed in the office of the Secretary of State.

From and after the effective date (May 15, 1973) of this Act, all powers vested in the Welfare Commissioner, and the Welfare Department, with respect to the promulgation and establishment of rules and regulations setting standards governing the granting, revocation, refusal and suspension of licenses for a child care facility, and the operation of a child care facility, are hereby transferred to, and the same shall hereafter be performed by, the Child Care Facility Review Board. It is the intent of this act that all powers vested in the Welfare Department and the Commissioner of Welfare to establish rules, regulations, and standards for the licensing of child care facilities, and the operation of child care facilities, and all powers with respect to the granting, revocation, refusal and suspension of licenses for a child care facility, and the operation of a child care facility, shall hereafter be vested in the Child Care Facility Review Board. The Commissioner of the Social Services Division of the Department of Social and Rehabilitative Services, shall continue to be the administrative agency to administer the provisions of Act 434 of 1969 (§§ 83-901 -- 83-916), in accordance with the rules, regulations and standards for the licensing and operation of child care facilities as promulgated by the Child Care Facility Review Board. (Acts 1969, No. 434, § 12, p. 1154; 1973, No. 123, § 2, p. 434; 1979, No. 904 § 1, p. 2005.)

83-911.1. Adjudication procedures. -- The Child Care Facility Review Board shall follow the procedures prescribed for adjudication in the Arkansas Administrative Procedure Act (§§ 5-701 --5-714) in exercising any power authorized by Section 10 of Act 434 of 1969 (Ark. Stat. Ann. Section 83-910 83-912, 83-913. (Repealed.)

83-914. Misdemeanors --Penalties. --Any person violating any provisions of this Act (§83-901 --83-916) and any person assisting any partnership, group, corporation, organization or association in violating any provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof,

shall be fined in any sum not less than $25.00, and not more than $100. Each day of such violation shall constitute a separate offense. (Acts 1969, No. 434, § 14, p. 1154.)

83-915. Injunctions. --When any person, partnership, group, corporation, organization or association shall operate or assist in the operation of a Child Care Facility which has not been licensed by the Welfare Department (Child Care Facility Review Board) in accordance with the provisions of this Act (§ 83-901 --83-916), the Welfare Department (Child Care Facility Review Board) shall have the right to go into the Chancery Court in the jurisdiction in which the Child Care Facility is being operated, and upon affidavit secure a writ of injunction, without bond, restraining and prohibiting the person, partnership, group, corporation, organization or association from operating the Child Care Facility. (Acts 1969, No. 434, § 15, p. 1154.)

83-916. Lincensing of existing facilities --Compliance with act within one year. --Any person, partnership, group, corporation, organization, or association in existence on the effective date (August 6, 1969) of this Act (§§ 83-901 --83-916), and which operates any child care facility, shall, upon application therefore be granted a license to operate such facility without regard to the requirements provided in this Act, or rules and regulations of the Welfare Department (Child Care Facility Review Board). Provided however, that such person, partnership, group, corporation, organization, or association shall comply with all requirments of this Act, or rules and regulations promulgated by the Welfare Department (Child Care Facility Review Board), regarding child care facilities within one (1) year from the date of issuance of any license. (Acts 1969, No. 434, § 16, p. 1154.)

83-917. Declaratory judgments on regulations. --Any rule or regulation promulgated by the Welfare Department (Child Care Facility Review Board) under authority of Section 3 of Act 434 of 1969, or under any other child care facility licensing law, shall, at the suit of any interested person instituted in the Chancery Court of Pulaski County, be subject to remedies provided by law for obtaining declaratory judgments; provided that the Welfare Commissioner shall be named a party defendant and summoned as in an action by ordinary proceedings. (Acts 1971, No. 715, § 1, p. 1417.)

83-918. This section has been declared unconstitutional by the U.S. District Court, Eastern District of Arkansas, Western Division in Case # LRC-83-192 November 22, 1983.

83-919. Has been declared unconstitutional by the U.S. District Court, Eastern District of Arkansas, Western Division in Case # LR-83-192 November 22, 1983.

83-920. Religious exemption - Written request and verifications. - Any church or group of churches, exempt from the State income tax levied by Act 118 of 1929, as amended, operating a child care facility, shall be exempt from obtaining a license to operate such facility by the receipt by the Child Care Facility Review Board of written request therefor, together with the written verifications required in Section 2 [§ 83-921] of this Act. A written request shall be made by those churches desiring exemption to the Child Care Facility Review Board which is mandated under the authority of Act 434 of 1969, as amended (Ark. Stats. Ann., 83-901 through 83-919) to license all child care facilities. [Acts 1983, No. 245, § 1, p. ____.]

83-921. Annual statement of compliance with standards - Visits by board - Standards for substantial compliance and for corporal punishment. - In order to maintain an exempt status, the child care facility shall stae [state] annually, in written form signed by the person or persons in charge, that their facility has met the fire, safety, [and] health inspections and is in substantial compliance with published standards that similar non-exempt child care facilities are required to meet. Visits to review and advise exempt facilities shall be made as deemed necessary by the Child Care Facility Review Board to verify and to maintain substantial compliance with all published standards for non-exempt facilities. Standards for substantial compliance shall not include those of a religious or curriculum nature so long as the health, safety and welfare of the child is [are] not endangered. Standards for corporal punishment shall be as established by present regulations unless aternative compliance is granted by the Child Care Facility Review Board. [Acts 1983, No. 245, § 2, p. ____.]

83-922. Review by board - Appeal or challenge. - Any questions of substantial compliance with the published standards shall be reviewed by the Child Care Facility Review Board. Final administrative actions of the Board shall be pursued by either party in the court of competent jurisidiction in the resident county of the facility under review. Challenge to the constitutionality or reasonableness of any regulation or statute may be made prior to any appeal under the Arkansas Administrative Procedure Act, Act 434 of 1967, as amended, (Ark. Stat. 5-701 et seq.). [Acts 1983, No. 245, § 3, p. ___.]

83-923. "Substantial compliance" and "is being operated in accordance with this Act" defined - Applicability. - As used in this Act [§§ 83-920 --83-924], and as used in Act 518 of 1981 [§§ 83-809, 83-818, 83-819], as amended, the term "substantial compliance", and the term "is being operated in accordance with this Act", as used in Act 434 of 1969 [§§ 83-901 -- 83-916], as amended, shall each mean, for the purposes of each of the aforementioned Acts, that a church-operated exempt or a non-exempt child care facility is being operated within the minimum requirements for substantial compliance as promulgated by the Child Care Facility Review Board.

It is the intent and purpose of this section that the term "substantial compliance" be applicable to all child care facilities. [Acts 1983, No. 245, § 4, p. _____.]

83-924. Act cumulative. - This Act [§§ 83-920 - 83-924] is cumulative to all other Acts heretofore enacted and shall not modify or repeal any of the provisions of Act 518 of 1981 [§§ 83-908, 83-918, 83-919]. [Acts 1983, No. 245, § 6, p. _____.].

APPENDIX C
SHOW CAUSE HEARING AND DENIAL, REVOCATION, OR SUSPENSION OF LICENSE WRITTEN NOTICE

If a complaint is received from Arkansas Social Services or from any interested person that a facility is not complying with the provisions of this Act or any published rule or regulation of Arkansas Social Services relating to child care facilities, the Child Care Facility Review Board shall issue a notice to the facility to show cause why their application for a license should not be denied or their license revoked or suspended. A show cause hearing shall be held at the next regular meeting of the Board at which time Arkansas Social Services or the complainant shall present evidence in support of their allegation that the facility is not in compliance with the provisions of this Act or any published rule or regulation. The facility may be represented by counsel and will be given an opportunity to refute the allegations.

After a hearing to show cause why a facility's license should not be denied, revoked, or suspended, the Child Care Facility Review Board may deny, revoke, or suspend the license of a child care facility. If the facility fails to appear for the show cause hearing, the allegations of the complainant or Arkansas Social Services shall be taken as confessed, and the Child Care Facility Review Board may deny a license, or revoke or suspend an existing license. If the Board finds, from evidence presented, that the child care facility has failed to comply with the provisions of this Act or any published rule or regulation; the Board may deny a license, or revoke or suspend an existing license. Revocation or suspension shall be effective when made, and Social Services shall notify the applicant or licensee of such action in writing and set out the basis for the denial, revocation, or suspension of the license.

PROCEDURAL PROCESS FOR HEARING ON DENIAL, REVOCATION, OR SUSPENSION OF LICENSE

ACT 349 of 1977 provides that administrative hearings for adjudication of the Child Care Facility Act shall follow the procedures prescribed for adjudication in the Arkansas Administrative Procedures Act (Act 434 of 1967). The following rules shall apply in all cases of adjudication:

a. All parties shall be afforded an opportunity for hearing after 20 days notice.

b. The notice shall include:

   1. A statement of the time, place, and nature of the hearing;
   2. A s tement of the local authority and jurisdiction under which the hearing is to be held;
   3. A short and plain statement of the matters of fact and law asserted.

c. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

d. Nothing in these regulations shall prohibit informal disposition by stipulation, settlement, consent order, or default.

e. The record shall include:

1. All pleadings, motions, and intermediate rulings;
2. Evidence received or considered, including, on request of any party, a transcript of oral proceedings or any part thereof;
3. A statement of matters officially noticed;
4. Offers of proof, objections, and rulings thereon;
5. Proposed findings and exceptions thereto;
6. All staff memoranda or data submitted to the hearing officer or members of an agency in connection with their consideration of the case.

f. Findings of fact shall be based exclusively on the evidence and on matters officially noted.

HEARINGS. - In every case of adjudication, and in cases of rule making in which the agency shall direct that oral testimony be taken, or hearing held:

a. Any person compelled to appear before any agency or representative thereof, shall have the right to be accompanied and advised by counsel. Every party shall have the right to appear in person or by counsel.

b. There shall preside at the hearing:

1. The chairman of the Child Care Facility Review Board or his designated representative and;
2. A quorum of Child Care Facility Review Board.

All presiding officers and all officers participating in decisions shall conduct themselves in an impartial manner and may at any time withdraw if they deem themselves disqualified. Any party may file an affidavit of personal bias of disqualification, which shall be ruled on by the Board and granted if timely, sufficient, and filed in good faith.

c. 1. Presiding officers shall have power, pursuant to published procedural rules of the Board, (1) to administer oaths and affirmations, (2) to maintain order, (3) to rule upon all questions arising during the course of a hearing or proceeding, (4) to permit discovery by deposition or otherwise, (5) to hold conferences for the settlement or simplification of issues, (6) to make or recommend decisions, and (7) generally to regulate and guide the course of the pending proceeding.

2. In any proceeding before the Board, if any person refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of the Board contained in its decision rendered after the hearing, the Child Care Facility Review Board or the presiding officer of said Board hearing may apply to the circuit court of the county where the proceedings were held or are being held for an order directing that person to take the requisite action or to otherwise comply with the order of the

Board. The Court shall issue such order in its discretion. Should any person willfully fail to comply with an order so issued, the Court shall punish him as for contempt.

d. Except as otherwise provided by law, the proponent of a rule, regulation, or order shall have the burden of proof. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonable prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted on record. When a hearing will be expedited, and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

e. Parties shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts.

f. Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the Child Care Facility Review Board's specialized knowledge. Parties shall be notified of material so noticed, including any staff memoranda or data, and shall be afforded a reasonable opportunity to show the contrary.

DECISIONS. -

a. When in a case of adjudication a majority of the officials of the Child Care Facility Review Board who are to render the decision have not heard the case or read the record, the decision, if adverse to a party other than the Board, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefore and of each issue of fact or law necessary thereto, prepared by the person who conducted the hearing.

b. In every case of adjudication, a final decision or order shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be served either personally or by mail with a copy of any decision or order.

Exparte communications. - Unless required for the disposition of exparte matters authorized by law, the Child Care Facility Review Board assigned to render a decision or to make final or proposed findings of fact or conclusions of law in any case of adjudication shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. A Board member:

1. May communicate with other members of the Board, and;

2. May have the aid and advice of Arkansas Social Service workers.

LICENSES. -

a. The granting, denial, or renewal of a license will be preceeded by notice and an opportunity for hearing, as provided in cases of adjudication.

b. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the Child Care Facility Review Board, and, in case the application is denied or the terms of a new license limited, until the last day for seeking review of the Board order, or a later date fixed by order of the reviewing court.

c. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of Board proceedings, the Child Care Facility Review Board gave notice by mail to the licensee of facts or conduct warranting the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.

EMERGENCY ACTION. -Whenever the Child Care Facility Review Board determines that a situation exists in a facility that jeopardizes the health, safety, or welfare of a child or children in the facility, so that continued operation of the facility may result in death or injury to a child or children in the facility, the Board may summarily suspend the license and direct that the facility cease operation immediately, and thereafter set down a hearing for the facility to show cause why the license of the facility should not be revoked or proper action taken under the provisions of the Administrative Procedures Act.

The Commissioner of Arkansas Social Services as chairman of the Child Care Facility Review Board is authorized and directed to act for the Board, when the Child Care Facility Review Board is not in session, to determine if an emergency situation exists; and to take immediate action to deny, revoke or suspend a license and order immediate closure of the facility. The action of the Commissioner shall be reviewed within five (5) days by a quorum of the Child Care Facility Review Board and his action revoked or confirmed; and thereafter the matter shall be set down for a hearing for the facility to show cause why the license of the facility should not be revoked or proper action taken under the provisions of the Administrative Procedures Act.

JUDICIAL REVIEW OF ADJUDICATION. -

a. In cases of adjudication, any person who considers himself injured in his person, business, or property by final Child Care Facility Review Board action shall be entitled to judicial review thereof under this Act. Nothing in this Section shall be construed to limit other means of review provided by law.

b. Proceedings for review shall be instituted by filing a petition.

1. In Circuit Court of any county in which the petitioner resides or does business, or;

2. In Circuit Court of Pulaski County within thirty days after service upon petitioner of the Child Care Facility Review Board's final decision, copies of the petition shall be served upon the chairman of the Board and all other parties of record by personal delivery or by mail. The court, in its discretion, may permit other interested persons to intervene.

c. The filing of the petition shall not automatically stay enforcement of the Board decision, but the Board or a reviewing court may do so upon such terms as may be just.

d. Within thirty (30) days after service of the petition, or within such further time as the court may allow, but not exceeding an aggregate of ninety (90) days, the Board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

e. If review proceedings have been instituted in two (2) or more Circuit Courts with respect to the same order, the Board shall file the record in the court in which a proceeding was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court in which the record has been filed.

f. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and the court finds that the evidence is material and that there were good reasons for failure to present it in the proceeding before the Board, the court may order that the additional evidence be taken before the Board upon such conditions as may be just. The Board may notify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

g. The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Board, not shown in the record, testimony may be taken before the court. The court shall, upon request hear oral argument and receive written briefs.

h. The court may affirm the decision of the agency or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

1. In violation of constitutional or statutory provisions;
2. In excess of the agency's statutory authority;
3. Made upon unlawful procedure;
4. Affected by other error of law;
5. Not supported by substantial evidence of record; or
6. Arbitrary, capricious, or characterized by abuse or discretion.